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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,801	12/19/2001	Yung Hsiang Huang	17,623	7835
23556	7590	07/19/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/050,801

Applicant(s)

HUANG ET AL.

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-14, 22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14, 22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

***Continued Prosecution Application***

1. The Request for Continued Examination (RCE) filed on 6/8/2005 under 37 CFR 1.114 based on parent Application No. 10/050,801 is acceptable and a RCE has been established. An action on the RCE follows.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-10, 12-14, 22, 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. After further reconsideration, is the phrase “the container top has a Visibility Indication ...” had the same meaning as the phrase “the container top has a second visibility index as recited in claims 1 and 22? If it is then the phrase “the container top has a Visibility Indication” lacks antecedent basis. The phrases “greater than 5” in claims 6, 8 and 10, “greater than about 5” in claim 7 and “greater than about 15” in claim 9 are inaccurate and indefinite because the range in these claims is out of range as indicated in claim 1, “the container top has a Visibility Indication of at least 1 and no more than 4”. The claim indicates that the range is no more than 4 and there is no support for the Visibility Indication of more than 5 or 15. Clarification is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10, 12-14, 22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julius (5,542,567) in view of Spruyt et al. (3,784,056; hereinafter Spruyt'056) and Huang et al. (6,269,970; hereinafter Huang'970). Julius discloses a package for storing and dispensing moist tissues/wet wipes in a pop-up format comprising a container base (36) connected with a container top (70), a pop-up style dispensing partition (62) having a dispensing orifice (94, 99) positioned between the container base and the container top and a group of moist tissue/wet wipes positioned in the container base between the container base and the pop-up style dispensing partition. Each wipe in the group of wet wipes having a first visibility index, the container top having a second visibility index and the pop-up style dispensing partition having a third visibility index. The wipes usually having a white color and the container base usually made from opaque plastic material. Since the color of the wipes is different than the color of the container base, therefore, the first visibility index is different than the third visibility index. Julius also discloses the other claimed limitations except for when the container top being closed the wipe from the group of wipes is visibly indicated at the container top as being in-position or not-in-position for pop-up dispensing as soon as the container top is next opened and the container top comprises a visibility indication of at least 1 and no more than 4.

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Spruyt'056 teaches a package (10) for storing and dispensing wet wipes comprising a container base (12) connected with a container top (14) and the container top made from transparent material to permit the user to view into the package while removing a wet wiper (column 3, lines 16-18). Huang'970 shows a package (20) for storing and dispensing wet wipes comprising a container base (22) connected with a container top (24) and the container top made from transparent or translucent material to permit the user to view into the package to determine the wipes remaining in the package (column 3, lines 40-46). It would have been obvious to one having ordinary skill in the art in view of Spruyt'056 and Huang'970 to modify the package of Julius so the container top is made from a transparent or translucent material to allow the user to view the wipes within the container top prior of removing the container top to dispensing the wipe. The container top of Julius as modified made from transparent or translucent material which is considered equivalent to the container top comprises a visibility indication of at least 1 and no more than 4 as claimed. Regarding the clarity of the visibility index, the selection of the specific clarity of the visibility index of either the first, second or third visibility index of the package would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using these specific visibility index as claimed solves any particular problem or yields any unexpected results.

### ***Response to Arguments***

Applicant's arguments filed on 6/8/2005 have been fully considered but they are not deemed to be persuasive.

The Declaration under 37 C.F.R. 1.132 of Yung Hsiang Huang filed on 6/8/2005 is noted. However, the Declaration is not persuasive because each of Spruyt'056 and Huang'970 teaches the container top is made from transparent material to permit the user to view into the package while removing the wipes (see Spruyt'056 above) and the container top is made from transparent or translucent material to allow the user to determine the quantity of the wipes remaining in the container (see Huang'970 above). The main purpose of either Spruyt'056 or Huang'970 is allowing the user to view the wipes within the container through the container top. Therefore, the container top of Julius as modified and as taught by Spruyt'056 and Huang'970 is allowing the user to view the wipes through the container top to determine the wipe is in-position or not-in-position prior of removing the container top whether the container top is made from transparent or translucent.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Spruyt'056 teaches the container top is made from transparent material and Huang'970 teaches the container top is made from transparent or translucent material to allow the user to view the wipes within the container. There does not appear to be anything unobvious about using the teaching of Spruyt'056 and Huang'970 to modify the container top of Julius to

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allow the user to determine the wipe is in-position or not-in-position prior of removing the container top.

Applicant's argument with respect to the phrase "the use of a translucent container top ... is not sufficient to guarantee that the wet wipe will be visible beneath the translucent container top" is noted. This is not convincing because the purpose for making the container top from either transparent or translucent material of Huang'970 is allowing the user to view the wipe beneath the container top. Therefore, whatever color of the container top, the wipe has to be seen by the user through the container top to meet the purpose of Huang'970 as disclosed.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.

lkb  
July 15, 2005



Luan K. Bui  
Primary Examiner